



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.10.2017
CORAM:

THE HONOURABLE MR .JUSTICE R.SUBBIAH
AND

WEB COPY THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.A.[MD].No.201 of 2016

(*) Chandrakumar

.. Appellant/ Sole accused

Vs.

State rep. by the
Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.
(Crime No.66 of 2010)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 12.11.2014, made in S.C.No.71 of 2013, by the learned District and Sessions Judge (Mahila Court), Pudukkottai District.

For appellant : Mr.M.Karunanithi,
Legal Aid Counsel

For respondent : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by **R.SUBBIAH, J.**]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 12.11.2014, made in S.C.No.71 of 2013 by the learned District and Sessions cum Mahila Court Judge, Pudukkottai.

2.The appellant stood convicted and sentenced to undergo imprisonment, as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for one year.
201 IPC	To undergo rigorous imprisonment for 7 years	To pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.

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(Both the sentences were ordered to run concurrently.)



3. The case of the prosecution is consciously narrated below:

(a) The accused is the husband and the deceased is the wife. The marriage between them was solemnized seven months prior to the date of occurrence. After the marriage, the accused was harassing the deceased by demanding dowry and money for consuming alcohol. On 24.05.2010 at 9.00 a.m., while the deceased was in her house, the accused developed a quarrel demanding money to consume alcohol. The deceased refused to give money. Enraged over the same, the accused strongly held the neck of the deceased and dashed her head on the wall, as a result of which, she sustained head injury at the right frontal and parietal bone, and succumbed to the injuries. In order to screen the said fact, the accused tied a green colour shawl on the neck of the deceased and hanged her in a hook used for hanging the fan. After some time, the accused himself cut the said shawl and laid the dead body of the deceased in the floor, as if the deceased committed suicide.

(b) PW1, who is the father of the deceased, received an information that the deceased committed suicide by hanging. On suspicion over the death of the deceased, PW1 went to Keeramangalam Police Station and lodged a complaint - Ex.P1.

(c) PW15 - the then Sub Inspector of Police, on receipt of Ex.P1, registered a case in Crime No.66 of 2010 under Sections 304 (b) and forwarded the express FIR - Ex.P9 to the learned Judicial Magistrate, Alangudi and copy of the same to the higher officials and to the Revenue Divisional Officer, Pudukkottai - PW11 for conducting inquest on the body of the deceased.

(d) Since the death occurred within seven months from the date of the marriage, the investigation was taken up by PW16 - the then Deputy Superintendent of Police, on 24.05.2010 at 2.40 p.m. and he rushed to the place of occurrence and prepared an observation mahazar and rough sketch (Ex.P10) in the presence of PW9 and one Senthilkumar. Thereafter, he recorded the statements of PW2 to PW6 and others. In the meantime, PW11 visited the place of occurrence and conducted inquest on the body of the deceased. After enquiry, PW11 submitted his report - Ex.P4, wherein PW11 has stated that there was no dowry harassment, however, the accused was harassing the deceased under the influence of alcohol. PW16, thereafter, forwarded the dead body of the deceased to the hospital for postmortem.

(e) PW13 - Dr.Rukmani conducted postmortem on the dead body of the deceased on 25.05.2010 at 11.00 a.m. She found the following injuries on the dead body of the deceased:

<https://hcservices.ecourts.gov.in/hcservices/> ~~External~~ injuries:

1) Left shoulder abrasion present - Nail mark.



2) Right shoulder abrasion 5 x 5 cm (multiple injuries) nail mark present.

3) Right arm abrasion 0.5 x 0.5 cm.

4) Injury right side neck contusion 5 x 0.5 cm.

5) Opening of skull : Irregular fracture right frontal & parietal bone (NC) present right frontal parietal lobes."

PW13 opined that the death of the deceased was due to head injury - fracture on the right frontal and parietal bone. Ex.P6 is the postmortem certificate.

(f) During the course of investigation, PW16 enquired PW11 - RDO on 25.05.2010 and arrested the accused, on the same day, at 2.00 p.m. at Keeramangalam Petrol Bunk and forwarded the accused to the Court for judicial remand. Due to transfer, PW16 handed over the investigation to PW17. PW17 took up the investigation and during the course of investigation, he, altered the case into one under Section 302 IPC and forwarded the alteration report - Ex.P11 to the Court. PW17, thereafter, handed over the investigation to the Inspector of Police - PW18.

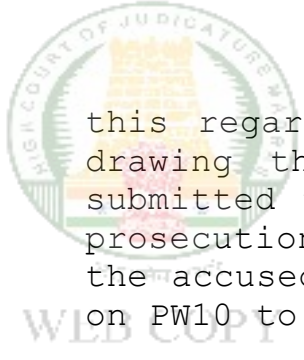
(g) PW18, during the course of investigation, collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused under Sections 302 and 201 IPC

4. Based on the above materials, the trial Court had framed two charges against the accused. The accused denied the same. In order to prove the charges, on the side of the prosecution, PW1 to PW18 were examined and Exs.P1 to P12 were marked.

5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, on the side of the accused, no one was examined and no document was marked.

6. The trial Court, after considering the oral and documentary evidence, found the accused guilty of the charge under Sections 302 and 201 IPC and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant / accused has come up with this appeal.

7. The learned counsel for the appellant would submit that there is no eyewitness in this case and it is a case based on circumstantial evidence and that the trial Court has recorded its conviction only based on the evidence of PW10, before whom the accused is alleged to have made an extra judicial confession. In



this regard, the learned counsel appearing for the appellant, by drawing the attention of this Court to the evidence of PW10, submitted that the evidence of PW10 cannot be relied upon, as the prosecution has failed to establish the close proximity between the accused and PW10, and as to how the accused reposed confidence on PW10 to divulge and confess about the act committed by him.

8. The learned counsel for the appellant would further submit that the prosecution has failed to establish the motive, which is the main link in the chain of circumstances and since there is a missing link in the chain of circumstances, the prosecution had failed to prove its case beyond the reasonable doubts and thereby the benefit of doubt may be extended to the appellant and he may be acquitted.

9. As an alternative submission, the learned counsel for the appellant submitted that there was no premeditation on the part of the accused to commit the murder of the deceased and the accused did not attack the deceased with any weapon and that the occurrence had happened due to sudden provocation and at the peak of quarrel, the accused had dashed the head of the deceased on the wall and thus, the act of the accused would fall only under Section 304 (ii) IPC and not under Section 302 IPC and prayed that considering the above, the conviction and sentence may be modified.

10. Per contra, the learned Additional Public Prosecutor submitted that the witnesses PW1 to PW3, PW5, PW6 and PW8 have clearly deposed that the accused used to consume alcohol and quarrel with the deceased demanding money. He would further submit that though the accused has stated that the deceased had committed suicide, the prosecution has clearly proved through medical evidence that the death of the deceased was a homicidal murder due to head injury suffered by her and not by hanging, and that the occurrence had happened in a dwelling house and accused has also failed to explain about the said injuries on the deceased. The evidence of PW10 also strengthened the case of the prosecution. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

11. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

12. It is a case based on circumstantial evidence. In a case of this nature, it is absolutely necessary for the prosecution to prove the circumstances projected by it beyond reasonable doubts and the circumstances should form a complete chain so as to unerringly pointing the guilt of the accused and there should not be any alternative hypothesis which would be inconsistent of



the guilt of the accused. Keeping this broad principle in mind, let us now analyse the circumstances projected by the prosecution.

13. Admittedly, in this case, the occurrence took place inside the house, where the accused and the deceased alone were living, after marriage. Therefore, naturally, there was no eyewitness to the occurrence. The witnesses PW1 to PW3, PW8 have clearly deposed that the accused is a drunkard and he used to quarrel with the deceased demanding money. PW6, under whom the accused was stated to be working as sculptor, has also specifically stated that after marriage, the accused has become a habitual drinker and he did not come to the job. PW11 - RDO has stated in his evidence that on enquiry, he found that the accused was harassing the deceased by demanding money and however, it was not a dowry demand. From the above evidences, the prosecution has clearly established that there was frequent quarrel between the accused and the deceased, and that the accused, under the influence alcohol, used to harass the deceased demanding money.

14. Though the accused did not state anything about the alleged demand made by him while questioning him under Section 313 of Cr.P.C., he has stated in the statement recorded under Section 174 Cr.P.C. by PW11- RDO that the deceased used to demand money from him and on the date of occurrence at 9.00 a.m. the deceased asked the coolie amount of Rs.300/- brought by him and he replied that out of Rs.100/- spent by him for his personal expenses, he kept Rs.200/- on the top of the bureau, but the deceased threatened to commit suicide, if he fails to give balance amount of Rs.100/- and as it was a usual threat, he did not take such threat seriously, but the deceased committed suicide by hanging. The above said statement made by the accused is totally unbelievable. Even for an imagination, no one could believe that the deceased committed suicide for not handing over the balance coolie amount of Rs.100/-, that too after receipt of Rs.200/-, out of Rs.300/-. On the other hand, based on the evidences of PW1 to PW3, PW6 & PW8, the prosecution has clearly projected that there was a motive for the occurrence and the same has also been corroborated by PW11 - RDO. Though the motive is flimsy, it cannot be said that the motive was not at all established. In a case of this nature, the motive would play only a least role. Thus, the contention of the learned counsel for the appellant that motive has not been proved by the prosecution and hence, there is a missing link in the chain of circumstance, is rejected.

15. The next circumstance relied on by the prosecution is the extra Judicial Confession Statement given to PW10. PW10 has stated in his evidence that on 24.05.2010 at about 2.00 p.m. while he was



replied that since his wife refused to give money, he had dashed her head towards the wall and thereafter, he hanged the deceased by using shawl and thus, the accused requested to conduct a panchayat for him.

16. According to the learned counsel for the appellant, the prosecution did not establish as to how the accused reposed confidence on PW10 to divulge the act committed by him and therefore, the evidence of PW10 cannot be relied upon. In the cross examination, PW10 has categorically stated that he is not the relative of the deceased. When a question was put to the accused under Section 313 of Cr.P.C. about the statement of PW10, the accused did not suggest anything and he did not even state that PW10 is an unknown person. Virtually, the defence has failed to bring anything in their favour by cross examining PW10. On the other hand, it is established by the prosecution that PW10 is residing in the same village. As it is not stated by the defence that PW10 is an unknown person, the possibility of the accused giving extra Judicial Confession Statement reposing confidence on PW10 cannot be ruled out. Further, the evidence of PW10 inspires the confidence of the Court. Thus, the prosecution has clearly established above chain of circumstance. Hence, the first contention of the learned counsel for the appellant is rejected.

17. So far as the medical evidence is concerned, it is clearly stated by PW13, who had conducted postmortem on the dead body of the deceased that the deceased died due to head injury ie., fracture on the right frontal and parietal bone. Apart from the said fracture on the vital part of the body, PW13 has also found abrasions, nail marks and contusion over the body of the deceased, which would clearly go to show that as stated by the prosecution, there was quarrel between the accused and the deceased, and the accused attacked the deceased and at the height of the said quarrel, the accused dashed the head of the deceased on the wall which resulted in the death of the deceased and in order to screen the evidence, the accused hanged the body of the deceased by using shawl to project it as a suicide.

18. As stated earlier, the deceased and the accused were alone in the house. The accused, who was lastly seen with the deceased, has to explain the injuries on the deceased, on the basis of facts within his special knowledge. Nowhere the accused has stated about the injury sustained on the deceased. Even in the statement, which was recorded under Section 174 Cr.P.C. on 25.05.2010 by PW11 - RDO, the accused did not state anything about the injury on the deceased. Since the accused failed to offer any explanation, it can be taken that he failed to discharge the burden cast upon him under Section 106 of the Indian Evidence Act. Since the accused ~~has not provided any explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances.~~ Thus, by the chain of circumstances viz., motive,



extra judicial confession statement and non-explanation of the injuries on the deceased, the prosecution has clearly established that it was this accused, who had committed the commission of the offences.

19. Having come to the said conclusion that it was this accused who caused the death of the deceased by dashing her head against the wall, now we have to examine as to what was the offence that was committed by the accused. Admittedly, the accused and the deceased were living under the same roof. The accused was the sole earning member. On the day of the occurrence, admittedly, there was a quarrel. He was not armed with any weapon. It was not a premeditated one. It was only in the height of the quarrel, having lost his mental balance, the accused, without taking any undue advantage, had dashed the head of the deceased against the wall. Even dashing of head against the wall was not intended. Thus, in our opinion, the act of the accused would squarely fall under exception 4 to Section 300 IPC. Therefore, the accused is liable to be punished only under Section 304(ii) IPC.

20. Now turning to the quantum of punishment, as we have already pointed out, there was no premeditation. The accused did not use any weapon and the occurrence was out of a sudden quarrel. The accused has got no bad antecedents. He has not been involved in any other crime subsequent to this occurrence also. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- for the offence under Section 304(ii) IPC would meet the ends of justice. So far as the offence under Section 201 IPC is concerned, this Court is of the view that the trial Court has rightly convicted and sentenced the accused, and there is no need to interfere with the same.

21. In the result, this Criminal Appeal is partly allowed in the following terms:

(a) The conviction and sentence imposed on the appellant / sole accused in S.C.No.71 of 2013 for the offence under Section 302 IPC are set aside and instead, he is convicted under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for four weeks.

(b) The conviction and sentence imposed on the accused under Section 201 IPC are confirmed.

(c) Both the sentences shall run concurrently. The period of sentence undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. Fine amount, if any, paid by the appellant/accused shall be duly adjusted.



22. The trial Court is directed to take steps to incarcerate the accused in prison, so as to serve out the remaining period of sentence.

23. The service rendered by Mr.M.Karunanithi, learned Legal Aid Counsel for the appellant is appreciated. The Legal Services Authority is directed to pay his remuneration.

Sd/-

Assistant Registrar(CS-I)

(*)corrected order issued on 22.02.2018.

/True Copy/

Sub Assistant Registrar

To

To be substituted order already despatched on 12.02.2018.

1. The District and Sessions Judge (Mahila Court),
Pudukkottai District.

2. The District and Sessions Judge,
Thro The Principal District Judge,
Pudukkottai Dist.

3. The Judicial Magistrate,
Alangudi.

4. The Chief Judicial Magistrate,
Pudukkottai District.

5. The District Collector,
Pudukkottai District.

6. The Superintendent of Central Prison,
Central Prison, Trichy.

7. The Director General of Police,
Pudukkottai District.

8. The Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.

9. The Additional Public Prosecutor,
Principal Bench of Madras High Court,
Madurai.



The Officer Incharge,
Legal Services Authority,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Karunanithi, Advocate Sr.No.84638

GCG

VB/SV/MMS/SAR4/12.02.2018/9P/12C
VB/SKN/RSK/SAR4/22.02.2018/9P/12C

Judgment made in
Crl.A.[MD].No.201 of 2016
31.10.2017